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Case report

The donating capacity of the elderly: A case report of vascular dementia

Fernanda Miguel MD [a,*], Ana Moreira MD [b], Máximo Colón MD [c]

[a] Hospital and University Center of Coimbra, EPE, Coimbra, Portugal
[b] Hospitalar Center of Cova da Beira, Covilhã, Portugal
[c] Central Branch of the National Institute of Forensic Medicine, Coimbra, Portugal

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ABSTRACT

Seniors may be more vulnerable to the influence of others, being less able to make judicious decisions. The legal legitimacy of donating capacity is based on the clinical assumption that, at the time of the event, the donor is able to understand the nature of the transaction, weigh its consequences and determine his/her actions according to it. From the point of view of forensic psychiatry, the evaluation of such premises is a challenge, reflecting the difficulty in assessing, retrospectively, the subject's cognitive functions at the time of the event. In cases where the cross-sectional evaluation favours the diagnosis of dementia it is crucial to objectify the onset and course of the illness. The authors report and discuss the case of a donation from father to sons, involving a great deal of money, made by an 85-year-old man, who had suffered an ischaemic cerebrovascular accident 5 years before.

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1. Introduction

The law assumes that all adults have 'legal capacity' unless it is proven otherwise.

In the elderly, mental incapacity is mostly observed in advanced dementia.[1–3] However, normal ageing frequently carries with it some degree of cognitive impairment, placing seniors more vulnerable to the influence of others, therefore being less able to make wise and sensible decisions.[1–3] With regard to donations, these are only considered legitimate if at the time of the event the donor was able to understand the nature of the transaction, to weigh its consequences and to determine for himself to be in agreement with it.[4,5]

From the point of view of forensic psychiatry, the evaluation of these assumptions is a challenge, reflecting the difficulty in assessing, retrospectively, the subject's cognitive functions at the time of the event. In cases where the cross-sectional evaluation favours the diagnosis of dementia, it is crucial to objectify the onset and course of the illness. To achieve this goal, the familiar, medical, imagiological and psychometrical data must be considered and valued in accordance with the current scientific medical knowledge. In Portugal, the literature is scarce regarding this issue, therefore, given its legal implications, crucial debate between clinicians and forensic expertise is still lacking. The authors propose to discuss this matter, presenting a case report of a donation from father to sons, involving a great deal of money, made by an 85-year-old man, who had suffered an ischaemic cerebrovascular accident (CVA) 5 years before.[d]

2. Case report

Mr. T. is an 85-year-old retired engineer, with no significant psychiatric or medical history known until 6 years ago. He was submitted in June 2009 to a forensic psychiatric evaluation, resulting from judicial proceedings ordered by the District Attorney, to clarify Mr. T.'s mental capacity regarding a donation made 9 months previously, to assess his mental state during the signing (as a deliberate act of consent), and ultimately to clear up the question concerning the legitimacy of his consent to the free handling of all the couple's large estate by their sons.

Mr. T.'s mental status examination revealed that he was a quiet, cordial and polite person but easily distractible, being unable to answer coherently questions regarding orientation in time and place, as well as recent personal events. Dyspraxia was also evident. A neuropsychological evaluation was requested to complement the issue. It was not possible to obtain a valid result on the Raven's Progressive Matrices because Mr. T. was unable to understand the instructions given and answered randomly and out of context. Next, on the Portuguese version of the Montreal Cognitive Assessment (MoCA), the result obtained was 15, supporting that

* Corresponding author. +351 961031769.
E-mail address: miguel_fernanda@yahoo.com (F. Miguel).

[d] For confidentially reasons, the dates here mentioned are factious, only the time interval between the events is factual.

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Mr. T had been developing a pathological process of loss of cognitive function.[e]

Mr. T. was a sedentary man with a longstanding smoking habit recently discontinued. His current medication included 50 mg of quetiapine, 20 mg of simvastatin and 150 mg of acetylsalicylic acid.

An outstanding case in his previous clinical record was an **ischaemic CVA**, which warranted his medical hospitalisation, for 6 days, in October 2002. At the time, a computed tomography (CT) scan of the head and a carotid ecoDoppler were performed, showing respectively, 'severe ischaemic leucoencephalopathy and multiple bilateral lacunar infarcts' and 'calcifications in the carotid siphon and left cerebral artery'.

In August 2003, Mr. T.'s General Practitioner solicited a specialised psychogeriatric consultation due to his complaints of impaired memory, irritability and periodic disorientation.

In the follow-up records of the psychogeriatric consultation, it was stated that these types of patterns of symptoms continued during the first and second follow-up appointments (October 2004 and February 2005, respectively), despite the absence of any relevant cognitive impairment found in the neuropsychological assessment, which had been previously made.

The CT scan of the head conducted in February 2005 revealed a 'worsening of ischaemic leucoencephalopathy and frontal lesions in the nuclei base and capsular regions'. By the time of his January 2008 appointment, his wife described the recurrence of his confusional states: "he stopped driving… he crossed red signs… he got lost and couldn't find his way back home". Increased difficulties in carrying out simple tasks were also pointed out: "now he takes a lot of time for dressing and buttoning up".

Three months later (April 2008), his last medical record mentioned that since the last appointment, Mr. T. had suffered three episodes of 'loss of consciousness and speech' and periods of agitation. During that consultation he accused his family of stealing from him.

Mr. T. had already been submitted a few weeks before, in a private manner, to a thorough neuropsychological assessment and diagnosed with severe disexecutive and amnestic syndromes, related to previous stroke. At this point, the neuropsychological tests conducted at the psychiatry forensic department supported Mr. T's cognitive deficits.

In a later interview, Mr. T.'s wife and her sister confirmed all the retrospective clinical data collected and claimed that Mr. T. was already ill and unable to understand the nature and consequences of his actions at the time of the donation.

3. Case discussion

The integration of clinical, imagiological and neuropsychological data suggest that Mr. T.'s current cognitive deficiencies were subsequent to the ischaemic CVA he suffered 6 years before. Assuming that the cerebrovascular lesions found on his CT scans are aetiologically related to the cognitive impairment process, we could assume a steep deterioration, marked at some points by Mr. T.'s clinical worsening.

Mr. T.'s case fits most plausibly in the item F01.9 (vascular dementia) according to the International Classification of Diseases (ICD-10).[6,7]

Such 'mental disease' implies an unequal impairment of multiple higher cortical functions including memory, language, general processing of information, judgement and thinking (such as planning or organising).

From the point of view of forensic psychiatry, such a condition, present at the time of the facts, perverted Mr. T.'s understanding of the nature and consequences of that transaction and placed him especially vulnerable to the influence of others.

Mr. T. is fully incapacitated to rule his own person and to manage his own assets, which should be taken into consideration towards his possible future legal interdiction. Nevertheless, he could benefit from a regular and appropriate neuropsychiatric follow-up and from support and supervision by a third person.

4. Conclusion

The assessment of the 'capacity to donate' and its association with the vulnerability of a person to undue influence involves both medical and legal fields. Advanced dementia is a final stage of a cognitive deteriorating longstanding process characterised by diffusive and obviously cognitive deficiencies. However, in many legally disputed cases of dementia, the most important question is to determine whether, at the time of the facts, there were already cognitive deficiencies or not and, if so, to evaluate their extension as well as the implications on one's own will and knowledge in respect of the nature and consequences of his own actions.

Despite the integration of all clinical, imagiological and neuropsychological retrospective and current data available, such an end is not an easy or decisive task even though based on methods of unquestionable accuracy. This area requires more research and this should include the collaboration of both medical and legal fields to provide clearer guidelines towards the assessment of these complex issues involving individual cases.

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None declared.

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[e] The expected average value for his age group and level of schooling on the MoCA is 26.35.